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BENTHAM AND THE CODIFIERS.

IN the same year in which our Declaration of Independence, written by a disciple of French thought, was adopted by the representatives of the colonies, there was published anonymously in London a pamphlet entitled "A Fragment on Government," or, as it has been called, "A Comment on the Commentaries." It attracted extraordinary attention and was attributed to the most eminent lawyers and statesmen of the time, as Lord Mansfield, Lord Camden, or Mr. Dunning, later Lord Ashburton. Its real author was Jeremy Bentham, a young barrister, the son of a prosperous attorney, and it was the beginning, not of official or financial advancement, but of a great fame and a great influence.

The pamphlet in question was in the nature of a declaration of independence of professional tradition, and took the form of a severe criticism on the Commentaries of Blackstone, to which, when delivered as lectures to undergraduates at Oxford by their courtly compiler, Bentham, a youth, had listened with a rebel heart. This famous brochure is often spoken of as "the beginning of modern English legal criticism and reform." Of course there are no beginnings and no endings to such large matters, and this radical utterance was only one of many phenomena attending a world-wide movement, of which the French Revolution was the most convulsive and the American Revolution the most sustained and successful incident. Bentham has been deemed closer to the French Encyclopedists than to any English school of writers, and he received and accepted French citizenship, which was conferred on him by the national assembly, on the motion of Brissot, in 1792.

His little book was hailed as, and has remained, a living force in liberalism, opposing itself to the conservative spirit which has always so strongly marked the English bar, and which Bentham freely attributed to the lowest forms of self-interest, saying, "It is as impossible for a lawyer to wish men out of litigation as for a physician to wish them in health."¹

¹ J. S. Mill, with more just discrimination, has attributed this conservatism "in part at least, to the extreme difficulty which a mind conversant only with one set of securities feels in conceiving that society can possibly be held together by any other."

In the preface to Bentham's collected works, edited by Sir J. Bowring and published at Edinburgh in 1838, it is pointed out that "the circumstance that seems to have given the first impulse to the inquiries which engrossed his future life was the dispute between Great Britain and her colonies, which, during his law studentship was the universal topic of conversation;" so we of this country find a certain connection between the revolt of the philosopher and of the colonies, and follow with especial interest the results of the new teaching.

Bentham found, after some vacillation, in Hume's essays an unassailable central principle, the principle of utility as a test of moral precepts and legislation, looking to their tendency to promote the greatest possible happiness of the greatest possible number. To this test he adhered, and he applied it with great boldness, and, it may be often said, eccentricity, to all departments of morals, law, and government until his death, in 1832, at the great age of eighty-four years.

Lord Loughborough declared the principle dangerous, but forty-six years after he had first in print maintained it, Bentham noted that Loughborough's remark was shrewd and strictly true, as to the sinister interests of such a functionary, since in a government modelled on these principles, his Lordship could not have been "attorney general with £15,000 a year nor chancellor with a peerage, with a veto upon all justice, with £25,000 a year, and with five hundred sinecures at his disposal."

Bentham was not merely critical but constructive as well. He did not confine himself to laying down principles, but soon sought to furnish minutely formulated codes of law and procedure according with these principles, not only for his own, but for all countries whether he had any knowledge of their languages, customs, necessities, history, and feelings or not. Law, like tinned roast beef, he thought susceptible of export without deterioration and fit for consumption in any clime. "Laws need not be of the wild and spontaneous growth of the country to which they are given," he wrote; "prejudice and the blindest custom must be humored, but they need not be the sole arbiters and guides." "Legislators, who, having freed themselves from the shackles of authority, have learned to soar above the mists of prejudice, know as well how to make laws for one country as for another,"—though he admits they required some data as to the circumstances of those for whom they deal.

Montesquieu had expressed the opposite belief, saying "that it is very improbable that the laws of one nation can ever be suited to the wants of another nation;" but Bentham contended that for drafting codes foreigners were preferable as more unprejudiced.

Of this sort of universal philosophical codification for which Bentham labored so long and corresponded so widely, the Hon. Lord McLaren has lately very justly said, "This type of code need not be further considered. No state which has grown up under a reasonably good legal system would agree to abandon its native institutions and accept a system of laws devised by philosophers;" and again, "A philosophical code may, like a new constitution be made in the time spent in writing it: in an age of shorthand and typewriting machines, this time need not be considered."¹

It may be mentioned in passing that a constitution prepared by eminent lawyers, after a comparative study of existing constitutions, would hardly seem to share the objections indicated. Such a draft constitution, drawn at the enlightened request of Mr. Henry Villard by a number of distinguished legal scholars and practitioners, among them Professor Thayer of Harvard Law School and Mr. Beeman of New York, was offered to Montana, on its becoming a State, but its provisions were only in part adopted.

Sitting at his Hermitage in Queen's Square Place, Westminster, watching the politics of the world, Bentham, or "the Hermit," as he loved to call himself, did not hesitate to address, by post or the public press, potentates or powers, wherever circumstances seemed to make it probable that a change of law was contemplated or possible, and to offer his services to advise on any measure in discussion or to furnish a complete code. So he addressed Alexander I., the Emperor of all the Russias, the people of Spain, Simon Snyder, Governor of Pennsylvania, his fellow-citizens of France, "James Madison, then President of the Congress of the American United States," Mehemet Ali, Albert Gallatin, Prince Adam Czartoriski of Poland, and in a circular communication, "the respective governors of the American United States," and in a series of letters, "The Citizens of the several American United States." He even proposed that, as we were not the only United States of America, and as the name "The Anglo-American United States" was a circumlocution, we should rename our country "Washingtonia,"² and advised us to "shut our ports against the common law as" we "would against the plague."³

¹ 9 Juridical Rev. 1-3

² Vol. 8, p. 569.

³ Vol. 3, p. 304.

Sir Henry Maine has since taught that many of the earliest ideas of man are reflected in ancient law, and that from their study can be traced "the steady progress of mankind from an age of formalities and ceremonies to an era of simplicity and symmetrical development." The fact that human laws and morals are as much the result of a "steady progress" of development as human bodies was not dreamt of in Bentham's philosophy, and this seems its capital defect.

He regarded right and justice as abstractions having their unchanging form as much as mineral crystals, the same for all times and all men, and that laws should be shaped accordingly. And yet, in rather an amusing way, his offers to amend the law of other nations were largely attacks upon and campaigns against the defects of the law in his own country.

Comparatively recently there has been completed a most instructive examination of his influence upon the affairs of a foreign nation whose legislation he earnestly sought to dominate, which seems to throw light upon the fate of most, if not all, of the direct attempts of the sage to be a lawgiver to the nations. In an extended discourse on "The Influence of Bentham upon Lawyers and Politicians in Spain," delivered by Don Luis Silvela on being received into the Spanish Royal Academy of Moral and Political Science in 1894, Don Luis finds, from an examination of the records of the Cortes and the history of his country, little, if any, recognition of the influence of the London Hermit, nor can he find that Bentham's letters to the Spanish people were either preserved by the Conde de Toreno, President of the Cortes, to whom they were sent in response to a letter from him asking Bentham's advice, or ever translated into the Spanish tongue. The philosopher seems to have addressed the Castilian with discourteous reflections on his motives, and to have been answered civilly but coldly, and thereafter ignored.

His discussion of the proposed upper chamber in the Spanish government seems to have been a repetition of his objections to the English House of Lords, and written without investigation or knowledge of Spanish institutions or sentiment. Bentham later published these letters in England, and his letters to Madrid belong, as Señor Silvela sharply observes, "to the homeward mail," and seem to have been part of his war on the house of peers of his own country.¹

¹ See Spanish view of "Bentham's Spanish Influence," by Courtney Kenney, 11 L. Q. R. p. 48. However, it should not be overlooked that the Patriotic Society of

In Portugal the Cortes, on receipt of Bentham's gift of his works, ordered them translated at the public cost, and his letter was read aloud in the legislative halls. The proposed constitution was adopted freed from the defects he had pointed out, and almost at once collapsed.

But while his codes were not adopted, it is quite certain that his ideas, or a great many of them, were assimilated, if we may use a word which seems most fit. It has been freely said that hardly an important reform in law has been effected within this century which Bentham had not foreshadowed and early advocated.

Thus he devoted five large volumes to the "Rationale of Judicial Evidence," and among other points strongly objected to the exclusion of witnesses on the ground of interest, urging that interest might affect the credibility but not the admissibility of evidence. That view has, in the main, prevailed and been established in the law of both England and America; and the recent enactment, long familiar to us, which in England permits one accused of crime to testify in his own behalf, and which has so divided and excited the English bench and bar, is only a further extension of Bentham's ideas.

He declared against exclusion of testimony on the ground of religious opinions, and the contention has been so successful that the constitutions of many of our States (as my own State of Wisconsin) enact as fundamental law that "no person shall be rendered incompetent to give evidence in any court of law or equity in consequence of his opinions on the subject of religion."

He advocated the registration of real property, which is now a common practice. He assailed laws against usury, and England has repealed and this country greatly moderated them. He advocated receiving the testimony of witnesses previously convicted of crime, and it is now received in both England and America. He vigorously opposed "death punishment," and the number of crimes punished capitally has been enormously reduced in the whole civilized world, and most notably in England through reforms introduced by Sir Samuel Romilly, the attached friend and disciple of Bentham. In our own country the death penalty has been wholly

"the Friends of the Constitution" in Spain made Bentham an honorary associate in 1820; that Don Augustin Arguelles, Minister of the Interior, requested his opinion as to trial by jury, the prison committee of the Cortes reported in favor of his Panopticon principle for the prisons of the kingdom in the same year, and at least two deputies wrote him for aid in shaping the laws of Spain.

abandoned in at least four of our States (in my own State of Wisconsin it has been unknown for forty-six years and with no detriment to justice). In several of the continental nations of Europe it has been wholly abolished, as in Holland, Portugal, and Italy; and so rarely inflicted as to be almost abolished in others, as Belgium, Bavaria, Sweden, and Denmark; and in the great empire of Russia it is abolished except as a penalty for certain high political offences.

He advocated education to be provided for and required by the government, and that duty has been taken up by many of our States, and is more and more recognized in England.

He advocated freedom in devising and bequeathing property, and our laws give the widest liberty, and the laws of England have constantly tended in the same direction. He advocated voting by ballot, long now in use in this country and for some years in England. He advocated a system of public prosecutors, which we have. Burton printed a long list of reforms, first advanced by Bentham and later adopted by legislation; and it might now be greatly extended, and I am sure that ten years from now it could be still more extended.

In fact, the majority of men, even of the higher intelligence, have so constantly been wrong when they have been opposed to Bentham, and time has justified his principles so often, that we may well doubt our conclusions, not seldom the result of mere inertia, when they conflict with his teachings.

Sir J. Fitz J. Stephen in his history of Criminal Law concludes that Bentham's writings "have had a degree of practical influence upon the legislation of his own and various other countries comparable only to those of Adam Smith and his successors upon commerce."

Over and above all the several amendments of law which he pressed for, Bentham vigorously demanded a complete code of laws, clear, simple, shaped on the principle of utility, which he had advocated, and all comprehensive. In his circular of 1817 to the citizens of the United States, whom he addressed as "Friends and fellow-men," he says: "Accept my services, — no man of tolerably liberal education but shall, if he pleases, know — and know without effort — much more of law than, at the end of the longest course of the intensest efforts, it is possible for the ablest lawyer to know at present. No man, be he even without education in other respects, — no man but, in his leisure hours, so he can but read, — may, if so it please him, know more of law than the most knowing among lawyers

can possibly know at the present." But notwithstanding, or, as he would have intimated, because of these high hopes held out, his correspondence with Governor Plumer of New Hampshire, with Governor Snyder of Pennsylvania, with Governor Nicolas of Virginia, with President Madison, all came to naught, and his splendid offers ended in civil expressions of regret from those he had addressed.

When Romilly visited Bentham at Ford Abbey, where he was living *en grand seigneur*, he found him, as he had found him for thirty years, giving six hours daily to writing on laws and legislation and composing codes, and spending the rest of his time in reading and exercise, or, as he himself said, "taking his anti-jentacular and post-prandial walks to prepare himself for his tasks of codification." Bentham wrote in his last days that he was codifying away "like any old dragon."

Yet, with curious disregard of a great contemporaneous code, he could write the Emperor of Russia in 1815 of the Code Napoleon, "With what degree of skill it is made up, I have never yet seen any use of inquiring."

It is perhaps not possible to trace to his hand any legislative act in this or any country.

It was long before Bentham that Pepys set down in his Diary, "Mr. Prin, till company come, did discourse with me a good while about the laws of England, telling me the main faults in them; and, among others, their obscurity through multitude of long statutes, which he is about to abstract out of all of a sort [*sic*], and as he lives and Parliaments come, get them put into laws and the other statutes repealed, and then it will be a short work to know the law." It cannot yet be said to be a short work to know the law, notwithstanding both Mr. Prin and Jeremy Bentham.

Mr. Leslie Stephen, in his life of his brother, Sir James, has pointed out that "with parliamentary reform an era of rapid and far-reaching changes set in, though Bentham died on the eve of entering the land of promise." That James Mill, on whom the mantle of Bentham fell, held a leading position in the India House, and when the charter of his company was renewed in 1833, one year after his master's death, his evidence largely shaped the alterations made. By its terms, one of the four members of the Governor-General's Council was to be appointed from persons not servants of the company, and was to attend only at meetings for framing laws. Macaulay was the first to hold the appointment,

and drafted the Indian Penal Code. Mr. Cameron, one of his assistants, was an earnest disciple of Bentham. It was not passed until 1860, after it had been revised by Sir Barnes Peacock. This code was a triumph for Benthamites, and after twenty-one years' trial won the highest commendation from Stephen in his history of Criminal Law.

It has served as a model for all the later Indian codes. It was a part of a systematic scheme of codifying since carried out. Sir J. Fitz J. Stephen, a valiant Benthamite till death, became legal member of the Indian Council in 1869, and was successor to Sir Henry Maine. He remained until 1872, devoting himself largely to drafting or revising codes for India on various subjects, as contracts, wills, and evidence, which have won great commendation from eminent Indian lawyers, though with some criticisms as to details. On his return to England he was employed by the government to prepare a draft evidence bill, which he finished in February, 1873; but the government went out in March, and the bill, therefore, failed of passage. He, however, transported the Indian Code ideas and methods into his vigorous agitations for and attempts at codifying in England, interesting many high officials in the subject. Now, as Sir W. H. Rattigan has pointed out, India has her Penal Code, a contract act, bills of exchange act, limitation act, registration act, evidence act, easement act, and others, and drafts for yet further codifying acts have been prepared.

Mr. F. E. Montague has pointed out the debt of the Anglo-Indian Code to Bentham, and suggested that it may play a part in the East hardly less momentous than did Justinian's recension of Roman law in the West, powerfully controlling the Oriental races while English Empire continues, and, like the Roman law, surviving though the authority that imposed it decline and fall.

The Indian codes have vigorously reacted on English legislation, both as models and through eminent Englishmen who, like Stephen, return from codifying in India to shape legislation in England. No one can read the reports of modern English courts without discovering that Great Britain is now in considerable part governed by an elaborate system of parliamentary laws, as the Bills of Exchange Act of 1882, and perhaps the Judicature Act, adopted within the present generation, prepared by commissions or eminent legal scholars, aiming to codify, elucidate, define, and modernize the law on their several subjects.

David Dudley Field, in his arguments for codification before the

New York legislature, was able to quote among other passages the following from Sir J. Fitz James Stephen as to the Indian codes: —

"You will naturally ask how this process of codification has succeeded? To this question I can answer that it has succeeded to a degree that no one could have anticipated, and the proofs of the fact are, in my mind, quite conclusive. One is the avidity with which the whole subject is studied, both by the English and by the native students in the universities.

"The knowledge which every civilian you meet in India has of the Penal Code and the two Procedure Codes is perfectly surprising to the English lawyer. People who in England would have a slight, indefinite, rule of thumb knowledge of criminal law, a knowledge which would guide them to the right book in a library, know the Penal Code by heart, and talk about the minutest details of its provisions with keen interest. I have been repeatedly informed that the law is the subject which the native students delight in at the universities, and that the influence, as a mere instrument of education of the codifying acts, can hardly be exaggerated. I have read in native newspapers detailed criticisms on the Evidence act, for instance, which proved that the writer must have studied it as any other literary work of interest might have been studied. . . . I once had occasion to consult a military officer upon certain measures connected with habitual criminals. He was a man whose life was passed in the saddle, who had hunted down thugs and dacoits as if they were game. Upon some remark which I made he pulled out of his pocket a little code of Criminal Procedure, bound like a memorandum-book, turned to the precise section which related to the matter in hand, and pointed out the way in which it worked with perfect precision. It is one of the many odd sights of Calcutta to see native policemen learning by heart the parts of the police act which concern them. The sergeant shouts it out phrase by phrase, and his squad obediently repeat it after him till they know it by heart. The only thing which prevents English speaking people from seeing that the law is really one of the most interesting and instructive studies in the world is that English lawyers have thrown it into a shape which can only be described as studiously repulsive."

The "Code Frederic," or "Landrecht," of Prussia, promulgated in 1751 under the authority of Frederick the Great, is commonly classed as the first of the modern codes of Europe. It had among its chief objects to unite the discordant peoples of his newly extended kingdom by common laws, and (a proper object for a military despot) to destroy the power of the lawyers, whom he berates in the introduction. This, of course, antedated Bentham's labors.

The next is the "Code Napoleon," or as it is called under the Republic, "Code Civil," promulgated under the authority of the great Emperor between the years 1804 and 1810, and designed to replace the extreme confusion of the "*droit écrit et droit coutume*" of France, where Voltaire had said, with bitter truth, that a traveller had to change laws as often as horses.

Savigny complained of the ignorance and haste with which it was completed, and Austin follows him and points out its defects in definition, but it has continued to dominate France long after the imperial house has fallen, and, having been imposed by conquest or its equivalent, has been adopted and retained in Italy, Holland, Belgium, the Rhenish Provinces, Poland, and Switzerland, and been a model for other countries as Greece. Napoleon's boast, "I shall go down to posterity with my code in my hand," has been justified.

Bentham with just pride pointed out in a letter to the Emperor of Russia that he alone of living men was quoted in the introduction to this code, and his name and doctrines were familiar and powerful in France long before this great work was accomplished.

It was upon this "Code Civil" that M. Appert, late Professor of Law at the University of Tokio, says the first Japanese Code was shaped, mainly owing to the association of the French Code with the impressive name of Napoleon.

Later codifications there have looked to the draft code of the German Empire also, and a code of civil procedure has been prepared by an English barrister.

Austria and Spain have long had codes shaped upon the civil law, but the great name and authority of Savigny, Sir W. H. Rattigan has pointed out, retarded codification in Germany until recently, but a code for the German Empire, after many years of preparation, was promulgated in 1898.

Quebec has had a "Code Civil" since 1865, and Canada adopted a criminal code in 1892. This is not meant as a comprehensive list of codes which is beyond the scope of this article, but as an intimation of the wide recognition of the principle of codification and the steady growth of such recognition.

Bentham has not lacked followers in this country, and one of the most potent in results as well as one of the earliest in time was Edward Livingston. He was a younger brother of Chancellor Livingston, who administered the inaugural oath to Washington. He was himself for six years member of the National House of Rep-

representatives from New York, and later held simultaneously the places of mayor of New York and United States District Attorney. Owing to a default on his part as to a large sum of money in his hands as such district attorney, occasioned largely by the dishonesty of a trusted clerk, he resigned at once both offices and removed to the newly acquired territory of Louisiana to endeavor to retrieve his fallen fortune, and there, immediately, took the leadership of the New Orleans bar. While in Congress, having already fallen under the influence of Bentham through Dumont's French redaction of some part of his works, he had sought to do away with the penalty of death for federal offences, but without avail. He found the laws of Louisiana in the direst confusion, consisting of Spanish law overlaid by French law, and then by English common law, as the result of the possession of that territory by the various powers. He first drafted a brief code of practice which was adopted by the legislature, and later took the chief part upon a commission appointed to draft a civil code for the State. This too was, without material alteration, enacted and became law.

In February, 1821, he was chosen by joint ballot of the general assembly of Louisiana to revise the criminal laws of the State. He was fifty-seven years old, and familiar with English, Roman, French, and Spanish law. He wrote at once to the governors and men of distinction in every State, to the principal foreign ministers and many publicists in foreign countries, for practical information. After three years of labor he completed a final draft for the printer, but it was accidentally consumed by fire in his house in New York the same night. His volumes of Bentham's works were burned at the same time, and he could not find them in any bookstore or library in New York. He wrote at once to his friend Du Ponceau, at Philadelphia, to "buy, borrow, or beg" them for him. Du Ponceau appears to have got them for him and is thanked for his trouble. At sixty years of age he began the work anew, completing it two years later. He had substantially abandoned his Southern residence and resumed his domicile in New York at this time, where much of this draft was prepared. Mr. Livingston, beginning in 1822, represented Louisiana three terms in the lower house of Congress and two years in the Senate. During this time he and Bentham corresponded and exchanged their respective works. He left the Senate to serve as Secretary of State of the United States, and Minister to France.

Louisiana, alienated by his long absence, never adopted this crim-

inal code, but it was published in both our own country and Europe, and at once raised its author's fame as a publicist to the highest rank. Founded on the French Code it was marked throughout by the direct influence of Bentham, to whom he long after wrote, "Although strongly impressed with the defects of our actual penal law, yet the perusal of your works first gave method to my ideas and taught me to consider legislation as a science governed by certain principles applicable to all its branches." The code was welcomed the world over. Letters of eulogy came from President Jefferson, the Emperor of Russia, and the King of Sweden. Victor Hugo wrote, "You will be numbered among the men of this age who have deserved most and best of mankind;" and Kent said he had done more than any legislator of the age. The King of the Netherlands sent him a gold medal, and the government of Guatemala caused his Code of Reform and Prison Discipline to be translated and adopted word for word. Bentham's works in their French dress had had an immense sale in Spanish America, and an important influence in forming the ideas of the founders of their republics. The unstable lot of those governments perhaps illustrates the dangers of exotic reforms.

Livingston studied clearness in his codification, and was used to read what he had prepared to persons unskilled in law and test the excellence of his composition by their ability to comprehend it. He prepared a book of definitions for all terms which he thus found difficult of understanding. Something like this system of definition is found in the later Indian and English codification. It is related, as illustrating the success of his practice code in doing away with difficulties, that a young lawyer from another State consulted him as to how long he would require to familiarize himself with the Louisiana practice. Livingston, with whom he was engaged to dine at four on the next day, replied he would promise to teach it to him before that time, and he records that he was successful in so doing. Livingston revised his penal code for federal enactment, and March 3, 1831, introduced it in the Senate. It was ordered printed for further consideration; but when the Senate again convened he was no longer a senator, and it was not further considered. He had by this time, under the will of his sister, the widow of General Montgomery, who fell at Quebec, succeeded to a fine estate upon the Hudson, and had returned to make his home there; and there he died in his seventy-second year from a sudden illness, when his strength seemed hardly abated.

It is not easy to trace the connection between these Louisiana codes and the important movement for codification having its home in New York and spreading thence, in the matter of practice and procedure at least, to a majority of the several States, though it seems obvious. The leading spirit in that movement was the late David Dudley Field, called "the greatest codifier since Bentham." I have examined the index of the three published volumes of his works, including many reports and addresses on codification, and do not find the names of either Bentham or Livingston or the Louisiana Code once there entered.

However, on the pages themselves I find Mr. Field referring to Bentham's great work on Evidence with the highest praise, and he freely quoted from Sir J. Fitz J. Stephen, Bentham's eminent disciple.

Mr. J. Newton Fiero, whose knowledge of the subject will not be doubted, has recently declared, "The movement in favor of a clear, simple, and concise method of practice began with the criticisms of Bentham very early in the century, and resulted, first, in the adoption of the Code of Procedure in Louisiana, as drafted by Edward Livingston, and subsequently, in 1846, in the New York Code of Procedure, as drafted by David Dudley Field and adopted and continued for a period of nearly thirty years."

Mr. Field's general codes, it may be said, were adopted in California and Dakota.

Revision of the statutes, behind which codification often lurks but half concealed, is now almost universal in our several States. The commission at present revising our federal statutes has power to report changes, and the Livingston codes have commanded the attention of at least one of the members of that commission. The International Law Association, which in August last held its first meeting in this country, is seeking the codification of the Law of Nations, the most illusive and sublimated of human regulations whose authority and sanction may still be invoked as law.

Perhaps the hermit of Queen's Square Place does not wholly deserve the commendation of his great editor and disciple, Mill, that "he found the philosophy of law a chaos, he left it a science." It is certainly not yet a perfected science; but no one can trace the course of legislation in England or in the United States, or on the continent of Europe, or in those great Asian empires most directly affected by European thought, without concluding that though Bentham's formal codes were "refused and rejected of

men" and of nations, yet we may say, without flippancy or dispute, that the soul of the great utilitarian and codifier "goes marching on."

When he found death approaching he characteristically said to his attending friend, "I now feel that I am dying; our care must be to minimize the pain. Do not let any of the servants come into the room, and keep away the youths; it will be distressing to them and they can be of no service. Yet I must not be alone; you will remain with me, and you only; and then we shall have reduced the pain to the least possible amount." This was his last legislation. His body was embalmed by his own direction and presented to University College, London, where it still is, although no longer shown to the public. He was fully persuaded that his plans for prison reform were defeated because the King personally disliked him, and in consequence he wrote a volume, only a part of which has ever been printed, entitled "History of the War between Jeremy Bentham and George the Third, by one of the Belligerents." The war is over, and the grave has claimed sovereign and subject alike; but in both Great Britain and a far wider region the dominion of the sage seems to outlast the dominion of the King, and his radical but benevolent philosophy exercises a far-reaching influence.

President Madison wrote to Bentham, some eighty-three years ago (1816), declining his proposals to prepare a complete code for the United States, and in his letter said of these proposals, "Although we cannot avail ourselves of them in the mode best in itself, I do not overlook the prospect that the fruits of your labors may, in some other, not be lost to us." It is submitted that this fragmentary review of the subject indicates that they were not "lost to us" or to the world.

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